

ORIGINAL

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 TOM OGNIBENE, et al.,

5 PLAINTIFFS,

6 -against-

Case No:
08 CV 01335 (LTS) (TDK)

7 SCHWARZ, et al.,

8 DEFENDANTS.
9 -----X

10 DATE: June 17, 2008

11 TIME: 12:41 P.M.
12

13
14 EXAMINATION BEFORE TRIAL of the Plaintiff,
15 THOMAS V. OGNIBENE s/h/a TOM OGNIBENE, taken by the
16 Defendant(s), pursuant to Stipulation and to the Federal
17 Rules of Civil Procedure, held at the offices of Michael A.
18 Cardozo, Esq., New York City Law Department, 100 Church
19 Street, New York, New York 10007, before Cleo Shenkin, a
20 Notary Public of the State of New York.
21
22
23
24
25

1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.
4 Lead Counsel for Plaintiff(s)
5 TOM OGNIENE, et al.
6 The National Building
7 1 South Sixth Street
8 Terre Haute, Indiana 47807-3510
9 BY: JOE LA RUE, ESQ.

7

8

9 MICHAEL A. CARDOZO, ESQ.
10 CORPORATION COUNSEL
11 NEW YORK CITY LAW DEPARTMENT
12 Attorney for Defendant(s)
13 SCHWARZ, et al.
14 100 Church Street
15 New York, New York 10007
16 BY: LISA GRUMET, ESQ.
17 SENIOR COUNSEL
18 File #: 2008004838
19 Control #: III02244

14

15

16 ALSO PRESENT:
17 ASHLEY COMPTON

17

18

* * *

19

20

21

22

23

24

25

1 T H O M A S V. O G N I B E N E, called as a witness,
2 having been first duly sworn by a Notary Public of the
3 State of New York, was examined and testified as follows:

4 EXAMINATION BY

5 MS. GRUMET:

6 Q. Please state your name for the record.

7 A. Thomas V. Ognibene.

8 Q. Where do you reside?

9 A. 64-82 83rd Street, Middle Village, New York
10 11379.

11 MS. GRUMET: To start, just for record, I
12 wanted to make clear that this deposition is
13 addressed to the claims raised in the plaintiff's
14 preliminary injunction motion and is deemed
15 continuing for the purposes of the remainder of
16 the litigation.

17 And I also just wanted to make clear that
18 for the purposes of the deposition, if I'm asking
19 you questions about what you did in connection
20 with your runs for elective office, that I will
21 be referring to yourself and to anyone acting on
22 your behalf.

23 THE WITNESS: Okay.

24 Q. Have you ever taken a deposition before?

25 A. Yes.

OGNIBENE

1 on the Conservative party line, in 2005, was not elected.

2 And then I ran again just recently in the special
3 election in the 30th Council District, in 2008, and was not
4 elected.

5 Q. And what are your claims in this litigation?

6 A. My claims in this litigation is that, although
7 I've been an experienced candidate and run with campaign
8 finance, under the newer laws that were passed by the City
9 Council, after I left, that they've become more restrictive
10 in terms of the opportunity for raising money and also for
11 raising money that will eventually become matched by
12 campaign finance.

13 Specifically the laws that I think make it
14 difficult for me as a candidate are the ones that limit the
15 opportunity to obtain campaign contribution from LLCs or
16 LLPs, uh, and also limiting contributions from persons who
17 either do business with the City or are part of a firm that
18 does business with the City to \$250, and then also the fact
19 that those contributions are not matchable, seriously
20 impair my ability to raise funds to run for public office.

21 Q. How did you become involved with the litigation?

22 A. I was interested in running for public office and
23 at the time that I was contacting people who had been
24 supportive of me and they advised me, particularly people
25 with the Rent Stabilization Association, that it was very

OGNIBENE

1 difficult for them to support me, and they went through
2 the -- you know, a litany of explanations as to why they
3 would have more difficulty, explaining it to me. I advised
4 them that I thought that that was outrageous and they said
5 that they were considering litigation at that time and
6 would I be interested in becoming a participant in that
7 litigation and I said certainly.

8 Q. What was the Rent Stabilization Association's
9 position, as expressed to you, concerning the impact that
10 the changes in the campaign finance law would have on their
11 ability to help your campaign?

12 A. Well, they said it would seriously impair their
13 ability to contribute, or at least assist with the matching
14 funds, because of the stricter new rules.

15 Q. How so?

16 A. Well, obviously many of the people that own
17 buildings do business under LLPs and LLCs, and so they
18 could not write, uh, checks from those organizations.

19 Uh, also, there was a limitation on the amount of
20 money that the packs could give.

21 And also, there were people that were part of
22 that that do business with the City of New York and they
23 wouldn't be eligible to give me funds that were matched.

24 Q. So, does the Rent Stabilization Association
25 ordinarily collect contributions from its members?

OGNIBENE

1 A. What they do is, they have a candidate come in
2 and meet with their board of directors and talk to them
3 about the issues of concern to the organization and they
4 decide whether or not they are going to either otherwise
5 support or endorse a candidate. If they do, they encourage
6 their members to support the candidate financially.

7 Q. Do they actually bundle the contributions from
8 their members?

9 A. Yes, on occasions they act as intermediaries.

10 Q. And could you explain what intermediaries means?

11 A. An intermediary is a person who will collect
12 checks from various people and then deliver them to you and
13 you have to identify that person with Campaign Finance.

14 In other words, if the person sent a check to you
15 directly, you wouldn't have to, but if he gives it to a
16 third party, the third party collects them and brings them
17 to you, he's a bundler, or the correct terminology is
18 "intermediary," and then when you file those checks with
19 Campaign Finance, you have to notify them who was the
20 person who brought the checks to you or acted as an
21 intermediary.

22 Q. Has the Rent Stabilization Association helped you
23 raise funds in the past?

24 A. Absolutely. Yes.

25 Q. Did they help you raise funds for your 2005

OGNIBENE

1 Q. And do you know how they knew to call you?

2 A. Well, I had advised the Rent Stabilization
3 Association that I would be a willing participant.

4 Q. Is the Rent Stabilization Association a plaintiff
5 in this case, to your knowledge?

6 A. I, I don't think so. I don't know.

7 I don't think so. I think it's just individuals
8 who are candidates, it's my understanding.

9 Q. Do you know why they are not participating
10 directly in this litigation --

11 A. No.

12 Q. -- as plaintiffs?

13 What would you like to see happen as a result of
14 this litigation?

15 A. I think that I would like to see it be a more
16 level playing field when it comes to the ability to raise
17 funds.

18 Certainly exempting unions is very detrimental to
19 Republican Conservative candidates, because 99 percent, in
20 my estimation, of union contributions go to Democratic
21 candidates.

22 Also, the traditional organizations that fund
23 Republican candidates I think have been seriously impacted
24 by the new rules.

25 The only thing that I would like to see is a

OGNIBENE

1 level playing.

2 Q. Would you be challenging the law if it covered
3 unions?

4 A. Say that --

5 Q. Would you be challenging the law if it covered
6 unions.

7 A. I still think the limits are unfair.

8 Q. And why is that?

9 A. I can give you an example.

10 I had a person that I've known for twenty years
11 who gave me a fifty dollar check and I was notified by
12 Campaign Finance that she worked for the Henry Street
13 Settlement that does business for the City and they
14 disallowed the matching funds on it.

15 Q. And other than the concerns you raised about
16 unions, how do you feel that the current campaign finance
17 law is unfair to Republicans?

18 A. Because I think that, first of all, it did not --

19 People should be allowed to support candidates
20 that support their views and I think that, one, limiting
21 the contributions from people who do business with the City
22 to \$250 and not matching it really does not have a sound
23 constitutional basis and it is unfair.

24 And someone like myself, who is an attorney, and
25 many attorneys would have loved to have supported me, they

OGNIBENE

1 would be much more comfortable writing a check from their
2 attorneys' account and most of them are LLPs, so that hurt
3 me a great deal. They don't like to -- they feel more
4 comfortable doing it that way than with personal funds.

5 Many of the real estate owners, I've been very
6 supportive of their issues, they all own buildings as LLCs,
7 and they can't write check from the business account.

8 I don't see why there is any reason for that.
9 There is no rationale, from my point of view. So, you are
10 limiting my access to a whole group of people who were
11 supportive of my candidacy.

12 Q. Do you believe that the partnership restrictions
13 disproportionately favor Democrats?

14 A. I, I --

15 That, I don't know.

16 Q. How about the LLC restrictions?

17 A. I couldn't give you an answer.

18 The only thing I could tell you is that it
19 limited my access.

20 Q. How about the LLP restrictions?

21 A. Same answer.

22 Q. And how about the doing business restrictions?

23 A. Probably it affects --

24 That, that would probably be an equal effect. I
25 don't know if there's any vantages with doing business, as

OGNIBENE

1 percent, are supportive of Democratic candidates and not
2 supportive of Republican candidates.

3 Q. Do you intend to run in the 2009 election?

4 A. Yes, I do.

5 Q. And for what office?

6 A. City Council for the 30th Council District.

7 Q. Do you intend to participate in public financing?

8 A. I will, I will --

9 I'll be able to answer that more clearly after
10 this litigation is settled.

11 Q. And what do you mean by that?

12 A. That if this litigation is won, I likely won't;
13 if my litigation is lost, I would have to rethink.

14 Q. And why do you say that?

15 A. Well, because if the -- if my case is sustained,
16 it will open up access for financing from organizations
17 that are otherwise prevented or prohibited from
18 contributing to me under the current law.

19 Q. Did you participate in public financing in the
20 special election?

21 A. Yes, I did.

22 Q. And why was that?

23 A. We had a very short time frame and the ability to
24 go out and raise funds and plan fund-raisers and do the
25 kinds of things that are necessarily, there simply wasn't

OGNIBENE

1 A. Well, one of the things that I was able to do was
2 go back to a list of people that had previously supported
3 me, contacted, called, met with people. Uh, then you go
4 and you get your lists of people and you do, you do
5 mailings and you then phone them.

6 There's two types of list. There's a small donor
7 list of people that you feel you can get up to fifty
8 dollars and you have some small fund-raisers for them and
9 then you have the major people, in which you go and sit
10 down with and talk to them about -- on a more direct and
11 personal level about raising funds.

12 Q. Are there any differences in how you conduct a
13 campaign for Council or for mayor?

14 A. Actually, it's, it's --

15 The only thing that changes is the response.

16 Q. What do you mean?

17 A. Running for Council, many, many people are very
18 supportive, because they think you have an opportunity to
19 win and they feel comfortable with your run.

20 For mayor, it was a little more different.

21 People were much more reluctant to donate money. Not
22 because they didn't think that you were a decent,
23 hardworking person, they just didn't think that it was
24 viable, and people generally like to pick winners.

25 Q. Okay.

OGNIBENE

1 legal field.

2 Q. And are there persons who have business dealings
3 with the City who you expect to receive increased
4 contributions from, but for the limits?

5 A. I definitely think that there are people out
6 there, lobbyist organizations that have interests in
7 litigation before the City Council, issues that are raised
8 in the City budget, that, you know, as a matter of policy,
9 make contributions to candidates that are supportive of
10 their position.

11 Q. Have you ever received significant support from
12 lobbyists in past elections?

13 A. I would say yes.

14 Q. In your 2005 mayoral campaign, what portion of
15 your contributions came from lobbyists?

16 A. Probably very little.

17 Q. In your 1997 Council race, what portion of your
18 campaign contributions came from --

19 A. Honestly, I can't recall.

20 Q. -- lobbyist?

21 And for your earlier Council races?

22 A. I really don't...

23 Q. For your 2005 mayoral campaign, what portion of
24 your contributions came from persons who have business
25 dealings with the City, other than lobbyists?

OGNIBENE

1 A. I don't think that anybody in their right mind
2 who was doing business with the City contributed to my
3 campaign.

4 Q. Why do you say that?

5 A. I honestly don't think that anybody wants to have
6 a problem with Michael Bloomberg.

7 Q. Do you think that people who had business
8 dealings with the City might have been concerned that they
9 would lose their business if they supported your campaign?

10 A. Well, I don't know if I would go that fair.
11 I think people didn't see me as particularly
12 viable, once I didn't get the Republican party line. So,
13 everybody waited to see if I was going to be viable, and
14 once you lose that viability, there's just no interest in
15 supporting your campaign.

16 Q. And why is that?

17 A. I guess the same reason that some horses run at
18 ninety-nine to one and some go off at even. People, you
19 know, feel much more comfortable supporting a winner and if
20 a person doesn't have an opportunity to win, there's less
21 of an interest in supporting them.

22 Q. Why would someone who has business dealings with
23 the City want to support a winner?

24 A. Well, I think that everybody -- you know, in our
25 society, everybody has an interest in having people in

OGNIBENE

1 office and in government who have views that are similar to
2 theirs or supportive of their ideas too. That's the whole
3 American way. That's why social service agencies support
4 Democratic candidates, that's why unions support Democratic
5 candidates. And I suppose that that's why people that have
6 interest that coincide with my views would support me.

7 Q. In your 1997 Council race, what portion of your
8 contributions were from persons with business dealings with
9 the City, other than lobbyists?

10 A. I can't recall that.

11 Q. In your 1997 Council race, what portion of your
12 contributions came from LLPs, LLCs or partnerships?

13 A. I really can't recall.

14 Q. Have you ever received support from unions?

15 A. I received support in the current campaign from a
16 union member. His union didn't endorse me, but the union
17 member himself was supportive of me. So, the union itself
18 didn't support me.

19 So, I would have to say no, it was an individual
20 who supported me.

21 Q. Have any unions ever supported you?

22 A. You know, I don't think so.

23 Q. Did the Sergeants Benevolent Association help
24 you --

25 A. I'm sorry, yes. Absolutely. I apologize. Yes,

OGNIBENE

1 the Sergeants Benevolent Association supported me.

2 Q. And what kind of support did they provide?

3 A. They called their members, uh, I think they -- I
4 think I received financial support from them also.

5 Q. And when did they provide that support?

6 A. Right after their contract negotiations with the
7 City stalled.

8 Q. And for which campaign?

9 A. 2005 mayoral.

10 Q. Did they support you for any other campaign?

11 A. No.

12 You know what, let me go back. Because I'm not
13 thinking.

14 The police unions have supported me over the
15 years, the PBA, firefighters and people like that.

16 Q. And for which campaigns?

17 A. Uh, I would think all, except the 2005 mayoral.
18 I think in all of my Council campaigns. Most of the
19 uniformed services were supportive of my candidacy.

20 Q. And which uniformed service supported your
21 campaign?

22 A. PBA, uniformed fire officers, firefighters.

23 You know, uh, it's hard for me to remember.

24 I would say universally the uniformed forces were
25 supportive.

OGNIBENE

1 they feel a much closer infinity to Democratic candidates
2 than they do to Republican candidates.

3 Q. Are there some unions that more commonly support
4 Republicans?

5 A. Yeah.

6 And I think it's law enforcement and uniformed
7 services are much more willing to cross that line.

8 Q. Are there any other unions that you are aware of
9 that more commonly support Republican candidates?

10 A. No.

11 MS. GRUMET: Do you want to take a
12 five-minute break?

13 MR. LA RUE: Yeah, that would be fine.

14 (Whereupon, a short recess was taken.)

15 (Whereupon, Ms. Compton left the deposition
16 room and did not return.)

17 Q. In your view, do campaign contributions by
18 persons who have business dealings with the City ever
19 influence the actions of elected officials?

20 A. They didn't influence mine.

21 As for other elected officials, I can't answer.

22 Q. In your view, is there a public perception that
23 campaign contributions by persons that have business
24 dealings with the City may influence the actions of elected
25 officials?

OGNIBENE

1 A. Yes.

2 Q. And what is the basis for your answer?

3 A. Just, uh, you know, standing at a train station,
4 talking to people and campaigning, as they come walking,
5 the ones that usually throw it back in your face make a
6 comment.

7 Q. And what do they say?

8 A. You know, "You're all a bunch of crooks."
9 You know, people have a lot of angry things to
10 say. So, my understanding is, just reading the papers,
11 with the slush fund issues and that, you get a general
12 sense that people think that people with money have a
13 greater influence than they do.

14 Q. And what do you mean by the "slush fund issues"?

15 A. Well, that was a City Council issue in which they
16 used nonexistent not-for-profits to park money, to be used
17 later.

18 The City Council did that. Specifically, the
19 speaker.

20 Q. In your view, do people who do business with the
21 City favor incumbent officials when making contributions?

22 A. I would say that it's true of all people who
23 contribute.

24 Q. And why do you say that?

25 A. Again, I think people feel comfortable with

OGNIBENE

1 winners and they are reluctant to back people, uh, you
2 know, that, that they don't think can win.

3 And, you know, I experienced that in 2005, when
4 many people said, "we love you Mr. Ognibene, but can you
5 beat Mr. Bloomberg," and the answer was probably not.

6 But that was their rationale. When my rationale
7 is if you vote for the person that you believe in, then,
8 you know, you are not a loser.

9 Unfortunately, people feel more comfortable with
10 winners. Or potential winners.

11 Q. In your view, do campaign contributions by
12 lobbyists ever influence the campaigns of elected
13 officials?

14 A. Influence? No.

15 Maybe allow maybe, maybe some more access.

16 Maybe. But not influence.

17 Q. And what do you mean by more access?

18 A. Well, you can't answer every phone call that
19 comes into your office, but generally if it's somebody
20 that's, you know, a lobbyist, generally if they call you
21 about a specific major issue, that's -- they are probably
22 more tuned into what's going on in government, and so you
23 take their call. But you can't take every call that comes
24 into your office.

25 Q. So then, in your view, do contributions by

OGNIBENE

1 lobbyists help lobbyists get access to elected officials?

2 A. You know, I'm not sure, I'm not sure.

3 And, you know, yeah, there's access. But I think
4 it's because you think that they have a targeted issue, you
5 know, rather than some generalized conversation.

6 People call you sometimes to talk about things
7 that you can't change or have any influence over.
8 Generally, when a lobbyist calls, it's about something
9 specific that's before the City Council or legislation, so
10 it's a call, at least it's something that you can deal with
11 with a yes or no answer.

12 Whereas, you can't take every call from everyone,
13 because they may be talking about things on a national
14 level, that you can't deal with.

15 Q. What is your view of the contribution limit
16 restrictions on lobbyist from the recent changes to the
17 campaign finance law?

18 A. You know I, I'm kind of -- I'm not really --
19 I understand there have to be some restrictions.
20 You know, I don't have a problem with having limits on, on
21 the total amount.

22 But you are talking about lobby -- lobbyists per
23 se, rather than particular organizations that are not --

24 Q. Yes, lobbyists.

25 MR. LA RUE: Can we go off the record for

OGNIBENE

1 just a moment.

2 (Whereupon, a short recess was taken.)

3 A. So, it's different from the lobbyists, as opposed
4 to the people who are actually doing business with the
5 City, even though -- that's what I'm more opposed to.

6 Lobbyist, if you want to limit what a particular
7 lobbying organization itself can contribute, I understand
8 that.

9 Q. So, in this litigation, are you personally
10 challenging the lower contribution limits that apply to
11 lobbyists?

12 A. Not necessarily, no.

13 MR. LA RUE: Can we go off the record for
14 just a minute.

15 MS. GRUMET: Sure.

16 MR. LA RUE: Let me meet with him and then
17 you can revisit this question, if you will, and
18 probe all you want to.

19 MS. GRUMET: Okay, can we just note, for the
20 record, that we are taking a break, at the
21 request of plaintiffs' counsel to speak with his
22 client.

23 MR. LA RUE: Definitely.

24 (Whereupon, the witness and his attorney
25 left the deposition room and returned shortly

OGNIBENE

1 specifically.

2 The answer is probably yes, there probably were
3 some people who did. But I can't be specific about it.

4 Q. Did you solicit contributions from officials from
5 any organizations that you had assisted in your role as a
6 Council member?

7 A. No.

8 Q. When you were a Council member, did anyone who
9 had contributed to your campaign ever lobby you to help
10 them or their organizations in some way?

11 A. Yes.

12 Q. And who?

13 A. You know, I'm -- I get lobbied --

14 Probably every Council member gets lobbied every
15 day from any -- so, you get calls for people that you have
16 contributed to.

17 Juniper Park Civic Association wanted to have the
18 park redone and so that's lobbying, when they come in and
19 say we need a new ball field.

20 But I don't think anybody ever lobbied on behalf
21 of themselves, they lobbied on behalf of the organization.

22 So, the answer is certainly, yes.

23 Q. Were you lobbied by the Rent Stabilization
24 Association?

25 A. Oh, absolutely.

OGNIBENE

1 a decision for what other people did. I really couldn't
2 answer that question.

3 Q. Okay.

4 What was the outcome of the special election?

5 A. Uh, Anthony Como won by thirty-nine votes over
6 Elizabeth Crowley, and by some almost three hundred votes
7 over me, out of approximately seventy-five hundred votes.

8 Anthony Como was the Republican organizational
9 candidate and Elizabeth Crowley was the Democratic
10 organizational candidate. And there was another candidate,
11 Charles Ober, who was an insurgent Democrat.

12 And Elizabeth Crowley was ineligible for public
13 funds, and Mr. Ober was, but I don't think he qualified.
14 And he only received seven hundred and something votes. He
15 finished a distant fourth.

16 Q. And do you have any opinion as to the reason for
17 the outcome?

18 A. Probably the organizational candidates had a
19 greater Election Day operation, in terms of being able to
20 get out the vote, which is phone calls, ringing door bells,
21 driving people to polls, et cetera.

22 Q. Who is Ronald Lattanzio?

23 A. Ron Lattanzio was a expeditor, who helped me
24 raise funds. I think over the period that I knew him I
25 raised close to two hundred thousand, over four years, and

OGNIBENE

1

2 Q. Have you spoken with any of the other plaintiffs
3 about this litigation?

4 A. Probably briefly with Fran Reiter. But just
5 causally, not formally.

6 I think when we signed some documents over at the
7 Manhattan law firm (indicating), she was going in and I was
8 coming out.

9 Q. And did you speak with anyone from the
10 Conservative party about this litigation?

11 A. No.

12 I didn't know they were part of it. I hadn't
13 thought about it.

14 MS. GRUMET: I have no further questions.

15 (Whereupon, at 2:00 P.M., the Examination of
16 this Witness was concluded.)

17

18

19


THOMAS V. OGNIBENE

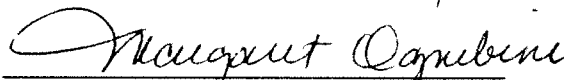
20

21 Subscribed and sworn to before me

22 this 21 day of July, 2008.

23

24


NOTARY PUBLIC

25

MARGARET OGNIBENE
COMMISSIONER OF DEEDS
NEW YORK CITY No. 4-4595
TERM EXPIRES MARCH 1, 19

2009

C E R T I F I C A T E

Cleo Shenkin
CLEO SHENKIN

Diamond Reporting, Inc.
ERRATA SHEET

Plaintiff(s):

Ognibene, et al.

Defendant(s):

Schwartz, et al.

[illegible]